

TOWN OF SOUTH BETHANY
BOARD OF ADJUSTMENT PUBLIC HEARING MINUTES

Friday, February 25, 2022, 12:00 p.m.

**This meeting/hearing was also conducted electronically pursuant to
Governor Carney's State of Emergency Declaration effective March 13, 2020.**

PRESENT: Chairman Steve Bunoski; Charlene Sturbitts; Martha Fields; Jimmy Oliver; Barrett Edwards
TOWN STAFF: Joe Hinks, Code Enforcement Officer; and Matt Amerling, Town Clerk
APPLICANT: **Paulette Chapman**, 161 New Castle Drive, Lot 68
ATTENDENCE: Paulette Chapman; Dennis Blades, contractor; Michael Loftus, 163 New Castle Drive; Sue Callaway, 240 Bayshore Drive; Dennis Kane, 32 S. Anchorage Avenue
ABSENT: BOA Member Al Rae

Chairman Bunoski called the Meeting to order at 12:49 p.m., citing Mr. Al Rae as the only Board member absent. All parties were sworn in who requested testimony during the hearing.

PURSUANT TO 22 DEL.C. SECTION 327 (a) AND ARTICLE XI, SECTION 145-38(A)(2), TWENTY-FIVE (25) FT rear yard setback requirements of the Code of South Bethany. The Board of Adjustment will hold a Public Hearing to consider the homeowner's request to extend a second-floor deck encroaching forty-two inches (42") into the rear yard setback.

Town Clerk Matt Amerling stated the public hearing notice for this meeting was posted on the property (161 New Castle Drive) on January 20, 2022; the notice was published in the *Coastal Point* newspaper on January 21, 2022; it was posted at Town Hall and on four (4) other locations within Town on January 19, 2022; and was sent via certified mail to the property owner and owners of property within a radius of two-hundred (200) feet of the property on January 19, 2022.

Town Code Enforcement Constable Joseph Hinks stated the applicant is desirous of elevating the house and repositioning the house, and, at the same time, extending a rear deck, which is going into the rear yard setback. Mr. Hinks stated the house is being repositioned to better fit within the building restriction line by being elevated some eight (8) feet and shifting forward two (2) feet to the front setback line, which is allowable as the house sits twenty-seven (27) feet back in the front; however, the desire was for a secondary exit, and in order to do that secondary exit, the proposed rear deck would be encroaching about forty-two (42) inches into the rear yard setback. Chairman Bunoski asked if there's a new set of stairs off the rear deck, how much of an infringement is going into that twenty-five (25)-foot setback? Mr. Hinks stated forty-two (42) inches. Chairman Bunoski asked if the deck is off the second level. Mr. Hinks stated yes. Mr. Barrett Edwards, of Hudson, Jones, Jaywork & Fisher, asked if the deck and stairs run the entire width of the rear of the house. Mr. Hinks stated yes, and the reason it's not more is because the house has been shifted forward, and that dimension would have been exacerbated had the house remained in place; so they're elevating it, shifting it forward, which hits that number of forty-two (42) inches. Mr. Edwards stated by pulling the house forward two (2) feet, which is allowable, it is creating more room for a rear deck effectively. Mr. Hinks stated yes. Chairman Bunoski asked even with the house being moved forward two (2) feet, the applicant is still requesting a forty-two (42)-inch variance for the rear. Mr. Hinks stated yes. BOA Secretary Martha Fields asked if the stairs could be narrower or does it have to be thirty-six (36) inches wide. Mr. Hinks stated the Code states stairs have to be thirty-six (36) inches wide. Mr. Edwards stated it appears that the rear deck is going to encroach forty-two (42) inches into the setback, but those stairs are probably going to encroach thirty-six (36) inches. Mr. Hinks stated the stairs will be quite a bit less, but the greatest encroachment is the forty-two (42) inches.

Ms. Paulette Chapman, of 161 New Castle Drive, stated this is part of a fairly large project as she is going to have her house lifted up to get it above the flood plain and move the house forward. Ms. Chapman stated she is requesting this forty-two (42)-inch variance into the twenty-five (25)-foot rear yard setback, which is buffered by the canal. Ms. Chapman stated the request in part, is also based upon ingress and egress and safety considerations that were enunciated in my letter, expressing the rationale for this forty-two (42)-inch variance. Ms. Chapman stated she received letters of support from her two (2) neighbors, Mr. Michael Loftus, of 163 New Castle Drive, who is in attendance at this meeting via the GoToMeeting; and Ted and Susan Girard, of 159 New Castle Drive. Chairman Bunoski asked how big of deck is Ms. Chapman going to put up. Ms. Chapman stated the length of the deck is twenty (20) feet, and the depth of the deck is six (6) feet. Chairman Bunoski asked if the two neighbor support letters submitted were prepared for Mr. Loftus and the Girards by Ms. Chapman. Ms. Chapman stated yes. Chairman Bunoski asked if the house were instead of being moved forward two (2) feet, instead moved forward three (3) feet, wouldn't that obviate almost this whole situation? Ms. Chapman stated she's not an expert but, as the homeowner since 2003, wanting to raise her home and do considerable changes consistent with floodplain issues, she's more than happy to move the house closer to the street. Mr. Edwards stated the Board has to stick with what has been advertised for the variance hearing, which is just for the rear yard, and if the Board would agree on something less invasive, Mr. Edwards wouldn't see anything wrong with that, but we can't expand what has been requested or put it to a different side, because that might impact the public notices and different people as well as their opinions.

Board member Charlene Sturbitts asked if it seems like the justification for the variance is egress, but the deck is what is really driving the variance? Ms. Chapman stated the egress of forty-two (42) inches into the rear setback that includes both the deck and stairs is what's driving this request. Mr. Edwards stated he thinks what Ms. Sturbitts is trying to get to is that if the deck was only three (3) feet – the same width as the stairs would be – there would only be an issue of a very minimal twelve (12) inches encroachment into the rear setback. Ms. Sturbitts stated yes, and she's questioning the need for the deck if the issue is egress. Ms. Chapman stated she thinks the need for a safe deck, which is also part of the analysis of the forty-two (42)-inch variance that she is seeking, will create a safe deck in which to leave the house or to gain entrance into the house. Chairman Bunoski stated he thinks Ms. Sturbitts is saying the applicant could obviate the deck or make the deck smaller, to the same depth as the stairs, so if you want ingress and egress, it can be done with a very minimal impact on the setback. Ms. Chapman stated she supposes one could do that but it's not practical in terms of the home, or going to and from those stairs; but, hypothetically, yes, you could have a blank set of stairs coming out of the balcony doors. Ms. Sturbitts stated she's reading from the justification letter, which says, "This variance request is for safety reasons in order to provide a fire safety exit"; so, Ms. Sturbitts is just questioning the request for the depth variance when we're talking about a safety exit. Ms. Chapman stated she think it's a combination of both: both a safety exit, and a deck that provides a continuation from balcony doors to a safety exit. Chairman Bunoski stated that's not what Ms. Chapman wrote in her justification letter. Chairman Bunoski stated the justification letter also reads, "My elderly mother who is eighty-five (85) resides in the house for a significant part of the year and we also have other elderly relatives who are frequent visitors." Ms. Chapman stated yes, that is the justification as she stated in the letter.

BOA member Jim Oliver asked if there is currently no ingress or egress from the back second floor. Ms. Chapman stated yes. Mr. Oliver asked if the bonus in this request is getting a deck. Ms. Chapman stated yes. Mr. Oliver asked if the applicant moved the house forward two (2) feet, the applicant has three-point-two (3.2) feet extra on the back. Ms. Chapman stated she knows that moving the house forward creates additional distance, but she's going to defer to Mr. Dennis Blades to be more precise and answer the Board. Mr. Oliver stated he doesn't see the logic in the deck because if the applicant only put stairs back there, she would still need a variance. Mr. Dennis Blades, the contractor for the project, stated because of the lifting of the house, there would be no egress for a person in a wheelchair, they were

hoping to use the back, and you can't use an elevator when there is a fire. Mr. Blades stated in terms of the deck only being the same depth as the steps, that extension is not enough for a wheelchair because Mr. Blades thinks the American with Disabilities Act (ADA) requires forty-two (42) at least, which is why they're requesting the forty-two (42) inches, to give a six (6)-foot back deck on the house to accommodate for wheelchairs. Chairman Bunoski asked if there was a second higher floor. Mr. Blades stated yes. Chairman Bunoski asked why the stairs are not also going to the highest level for ingress and egress. Mr. Blades stated there is no access from the second floor and the only proposal now is from the elevated first floor. Chairman Bunoski stated – like with the first case (Bomberger) – he is struck by the idea of doing this whole process and asking for the variances is relying upon the fire safety exit, and Chairman Bunoski would assume on the higher floor above, there would be a fire safety exit for any bedrooms up there. Chairman Bunoski asked why the rear deck has to be six (6) feet as opposed to three (3) or four (4) feet. Mr. Blades stated he's not absolutely sure, but he believes the ADA requirements for a circumference to accommodate a wheelchair turn has to be forty-two (42) inches. Chairman Bunoski asked Mr. Hinks if he knows if the ADA requirement is thirty-six (36) or forty-two (42) inches. Mr. Hinks stated the sphere in which you turn the wheelchairs, according to the ADA manual, is a minimum of sixty (60) inches or five (5) feet, which is why the applicant is requesting the size of deck to be six (6) feet deep. Mr. Edwards entered the four (4) letters of support as Exhibit C. Mr. Michael Loftus, of 163 New Castle Drive, stated Ms. Chapman has been his neighbor since 2007 and when she approached him and explained to him what she was planning on doing, he and his wife do not have any problem with it.

Mr. Oliver stated he sees the need for a rear ingress and egress, but what he doesn't think is needed is the six (6)-foot deck, and he thinks there's something smaller that could be done that would still promote ingress and egress. Ms. Sturbitts stated she agrees with Mr. Oliver and she doesn't think there's anything in the record that shows particular characteristics of this property that would create an exceptional practical difficulty in constructing those stairs as an egress, particularly since this is new construction. Ms. Sturbitts stated she also doesn't think that supports the deck portion of the project. Ms. Fields stated she agrees with Mr. Oliver and Ms. Sturbitts in that she doesn't see the justification for the six (6)-foot deck. Chairman Bunoski stated he understands having the twelve (12)-inch variance for the stairway for an ingress and egress, and even though Chairman Bunoski knows he's in the minority here, he doesn't really have a problem with the deck going out as far as is proposed.

Chairman Bunoski motioned to approve a variance of twelve (12) inches to allow for the construction of the walkway and stairway running the full width of the rear of the dwelling situated on the property from the second-floor down to the ground level. BOA Member Martha Fields seconded the motion as it accomplishes the goal of the homeowner and is the least intrusive variance to grant. Motion carried 4-0.

Chairman Bunoski motioned to approve a thirty-six (36)-inch variance for the installation of the twenty (20)-foot deck as requested by the Applicant. Mr. Oliver seconded the motion. Motion denied 3-1 (Chairman Bunoski voted FOR). Ms. Chapman asked if she wanted to request a variance for her front yard setback, would she need to submit a new, different variance application. Mr. Edwards stated yes.

The hearing was adjourned at 1:57 p.m. The Board agreed to take a ten (10)-minute break.

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| Exhibit A | Certified letters to neighbors & Town public hearing notice from the Jan. 21, 2022, <i>Coastal Point</i> newspaper |
| Exhibit B | Variance application package including letter, plat survey and photos |
| Exhibit C | Correspondence from residents in favor of variance |